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94-129

September 11, 1997

Office of the Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, DC 20554

FCC

Re: ~~CC Docket~~ No. 97-248

Dear Secretary:

Enclosed please find the original, 11 copies and one diskette of the Comments of the National Association of Attorneys General Telecommunications Subcommittee to be filed in the above matter, as well as a Motion for Leave.

Thank you for your consideration.

Very truly yours,

Neil G. Fishman
Assistant Attorney General

NGF:pas
Enclosures

c: Cathy Seidel
Common Carrier Bureau

Formal Complaints Bench
Enforcement Division

International Transcription Services, Inc.
Washington, D.C.

C+H

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

In the Matter of	)	CC Docket No. 94-129
	)	
Implementation of the Subscriber	)	
Carrier Selection Changes	)	
Provisions of the	)	
Telecommunications Act of 1996	)	
	)	
Policies and Rules Concerning	)	
Unauthorized Changes of	)	
Consumers' Long Distance	)	
Carriers	)	September 12, 1997

COMMENTS OF THE NATIONAL ASSOCIATION OF ATTORNEYS GENERAL, CONSUMER PROTECTION COMMITTEE, TELECOMMUNICATIONS SUBCOMMITTEE

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The Telecommunications Subcommittee of the Consumer Protection Committee of the National Association of Attorneys General and the Attorneys General of the states of Alaska, Arizona, Arkansas, California, Connecticut, Delaware, Florida, Idaho, Illinois, Indiana, Iowa, Kansas, Maryland, Michigan, Minnesota, Nevada, New Mexico, New York, North Carolina, Ohio, Rhode Island, Tennessee, Vermont, Washington, West Virginia and Wisconsin (Attorneys General) submit these comments in response to the Federal Communication Commission's (Commission) Further Notice of Proposed Rule Making And Memorandum Opinion And Order On Reconsideration (FNPRM) regarding unintended or unauthorized switching of preferred telecommunications carriers, a practice known as "slamming."

INTRODUCTION

The Attorneys General strongly support the Commission's proposals to increase subscriber protections against unlawful changes of preferred carriers as required by Section 258 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996[1]. However, in order to reduce slamming and to prevent continuation of deceptive and abusive practices, we believe additional safeguards are needed. We particularly urge the Commission to do the following:

- Eliminate the "welcome package" verification option;
- Extend verification requirements to all telemarketing sales;
- Determine that subscribers are not obligated for unpaid unauthorized toll charges that are billed after an unlawful change;
- Prohibit specific deceptive and fraudulent practices that carriers use to slam consumers; and
- Require that consumers be notified of preferred carrier change orders;

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[1] 47 U.S.C. § 258. Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996 Act).

As explained below, we believe that the Commission's proposals extend protections for subscribers without unduly burdening carriers' opportunity to compete for new subscribers. We also believe that more remedial measures are required to effectively limit consumer abuse from slamming.

I. SLAMMING ROBS CONSUMERS OF THE BENEFITS OF A COMPETITIVE TELECOMMUNICATIONS MARKETPLACE. EFFECTIVE ACTION MUST BE TAKEN TO STOP THESE ABUSES.

Consumer complaints regarding unintended or unauthorized switching of preferred telecommunications carriers--a practice referred to as "slamming"--represent an ever-increasing number of complaints received by State Attorneys General.[2] The problem began with long distance carriers and has continued to expand exponentially since the Commission last revised rules to curb the use of deceptive and fraudulent written Letters of Authorization (LOAs).[3]

The Commission's concern about similar practices arising in emerging local competitive markets is well-founded. Slamming is a plague that distorts the competitive marketplace and impedes its development. Without effective remedial action, consumer confidence will be diminished, subscribers will be stolen from honest competitors, and thieves will be financially rewarded.

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[2] A selection of recent complaints, which illustrate particular deceptive and abusive tactics experienced by consumers are included in the Appendix submitted with these comments (App. 18).

[3] The Attorneys General support the remedial measures the Commission implemented to prevent deceptive and misleading LOAs. However, unscrupulous promoters do not abandon these because a rule has been enacted. An example of an LOA combined with a sweepstakes entry form distributed within the past six weeks is included in the Appendix (App. 27).

Attorneys General have worked aggressively to stop slamming. As chief state law enforcement officials responsible for prosecuting violations of antitrust and consumer protection laws, we have a unique role in maintaining the integrity of competitive markets while protecting consumers from fraud and other abusive tactics. We have encouraged federal and state legislative and administrative anti-slamming measures, prosecuted unscrupulous carriers, and obtained judgments that provide for injunctions, restitution and penalty payments.[4] Nevertheless, there is widespread agreement that enforcement efforts and legislative enactments to date have not effectively curtailed slamming practices.

The Commission has grappled with slamming since competition was introduced in long distance service in the mid 1980s. Although there have been some successes, the increasing tide of consumer complaints dramatically documents persistent efforts by unscrupulous providers to use fraud and deception to extract payments from a vulnerable public.

By providing anti-slamming measures in Section 258 of the 1996 Act, Congress unequivocally directed the Commission to take action to stop these abuses, and to preserve and protect consumer choice in emerging competitive markets. The Commission must act decisively to carry out this Congressional mandate.

II. THE COMMISSION'S PROPOSALS FOR ENHANCED PROTECTIONS ARE APPROPRIATE IN VIEW OF THE LONG TRACK RECORD OF CONSUMER ABUSE.

Slamming occurs because it is a simple and effective way to extract unlawful payments from customers. When these deceptive and fraudulent practices no longer produce quick profits, the practices will disappear from the marketplace. By enacting Section 258 of the 1996 Act,

[4] Examples of state legislative and regulatory measures regarding unauthorized change orders and a list of state law enforcement actions brought during the last two years are included in the Appendix (App. 19, 50-62).

Congress intended to make slamming unprofitable by requiring unauthorized carriers to turn over payments to the authorized carrier that the consumer paid after an unlawful change order. We support the Commission's effort to implement this Congressional directive as well as related proposals included in the FNPRM which are discussed below.

A. The "Welcome Package" Verification Method Should Involve An Affirmative Response to Eliminate The Opportunity For Negative Option Enrollment.

We strongly endorse the Commission's determination to consider elimination of the negative option "welcome package" verification method as currently provided in 47 CFR § 64.1100(d), the Commission's telemarketing verification rules, because it enables unscrupulous carriers to enroll subscribers without affirmative consent (FNPRM, para. 16-18, 63,64). Although the procedure *may sometimes be used as a post-sale verification method*, it is often used when an initial telemarketer has not obtained authorization for a carrier change. Under this circumstance, a customer's failure to respond to the "welcome package" is transformed into an invalid basis for the change.

According to complaints, "welcome package" mailings are often regarded as junk mail that consumers routinely ignore or discard. Some promoters have used stylized return postcards that conceal, instead of reveal, a subscriber's right to cancel a purported oral agreement to change carriers. In these situations where consumers have not agreed to switch carriers, the verification operates as a "negative option" -- a sales method expressly prohibited by the Commission's written authorization rules, 47 CFR § 64.1150(f).[5]

[5] There have been many enforcement actions directed at slammers that purportedly used this confirmation method. See, e.g., Wisconsin v. National Accounts, Inc., Circuit Court Case No. 96 CV 2479 (1996); Wisconsin v. The Furst Group, Dane County, Circuit Court Case No. 95 CV 00691 (1995); Illinois v. Equal Net Corp., et al., No. CH 0142, Sangamon County Circuit Court (1995).

As currently structured, this verification method is ineffective as it does not provide adequate and reliable notice to subscribers to constitute a *post-sale* confirmation. Because of the potential for abuse and the absence a meaningful way to ensure that a "welcome package" in fact confirms a prior order, this verification procedure should be eliminated.

For carriers interested in confirming oral change orders with an affirmative written authorization, the procedures in § 64.1100(a) remain available. Under this section, post-sale verification may be evidenced by obtaining a written LOA prior to implementing the switch. Then, carriers could still use a "welcome package" that required an affirmative response prior to making a switch.

B. Consumer Liability To Unauthorized Carriers Should Be Limited In Order To Remove The Economic Incentive From Slamming.

We welcome the Commission's request for comments regarding the situation in which a subscriber has not paid for toll and other charges billed by an unauthorized carrier (FNPRM, para. 27). For subscribers who detect unlawful change orders, refuse payment of toll and other charges, and, within a reasonable time, take steps to replace the unauthorized carrier, no obligation to pay for disputed, unauthorized carrier charges should be recognized.

This approach to subscriber liability for unpaid, unauthorized carrier changes would place buyers and sellers of telecommunications services under the same standards as exist in other competitive markets. Under most state consumer protection laws, consumers are not liable to pay for service or goods which have not been ordered. A seller should not be able to obtain payment

for a service unless a consumer affirmatively ordered the service.[6] Any other rule simply encourages fraudulent activity.

By having no consumer liability for unpaid charges, carriers would be economically motivated to obtain valid subscriber authorization. This process would place the burden upon the submitting carrier to obtain a valid authorization as is required by the current rules. Furthermore, this approach is entirely consistent with the Congressional mandate established in Section 258 of the 1996 Act--the slammer is not entitled to retain any revenues from its illegal acts.

Prior authorized carriers will not sustain significant costs and would experience lost revenue only to the extent that such carriers would have recovered the amounts from the unauthorized carriers (FNPRM, para. 27). It is reasonable to expect that increased revenue from declining slamming complaints will more than offset lost revenue (the recovery of which is speculative) resulting from nonpayment by subscribers.[7]

Furthermore, the Commission should require that LECs expand their current approach for resolving slamming complaints. Under the current procedure, LECs investigate complaints and require a carrier to provide a valid LOA or other verification to avoid responsibility for the cost of switching a slammed customer back to their carrier of choice.[8] This procedure should be

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[6] "A person is not required to deal with another unless he so desires and, ordinarily, a person should not be required to become an obligor unless he so desires." Stein v. Simpson, 37 Cal. 2d 79, 86, 230 P.2d 816 (1951); Lauriedale Assoc., Ltd. v. Wilson, 7 Cal. App. 4th 1439, 1449, 9 Cal. Rptr. 2d 774 (1992); Restatement of Restitution, § 140. See D. Gilles and N. Fishman, Consumer Protection Against Slamming: Disconnecting Fraudulent and Deceptive Practices, 4 CommLaw Conspectus 215 (1996).

[7] Generally speaking, slamming complaints involving *unpaid toll and other charges* are made soon after the unauthorized switch. By setting a specific time period after billing for complaints to be filed, the amounts involved would be minimized.

[8] In re Illinois Citizens Utility Board Petition for Rule Making, Memorandum Opinion and Order, 2 FCC Rcd. 1726 (1987).

expanded to include unpaid toll and other charges. If a subscriber disputes that a change was authorized and withholds payment of disputed charges, collection of the disputed charges should be suspended while the carrier has an opportunity to substantiate compliance and authorization for the switch.[9] Unless appropriate documentation is produced, the disputed charges should be deleted from the subscriber's bill. The unauthorized carrier should bear these costs, as well as any applicable costs associated with handling the complaint

If the LEC cannot determine whether the switch was authorized and lawfully implemented, the disputed charges should be deleted from the LEC bill, permitting the carrier to pursue independent collection action.

We believe that carriers' concern that this procedure would encourage bogus claims by consumers is outweighed by the enhanced deterrent effect (FNPRM, para. 27). To suggest that legitimate carriers would be victimized by recurring false claims is speculative and unfounded.[10] And, in any event, submitting carriers possess the ability to protect themselves by obtaining and preserving a record of valid authorization and seeking prosecution of fraudulent acts.

C. The Commission's Proposal To Structure The Manner For Determining InterCarrier Liability Must Be Refined To Ensure Congressional Intent To Make Slamming Unprofitable Is Achieved.

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[9] The Commission originated this approach, but limited the suspension of charges to fees for carrier charges. Instead of investigating slamming disputes, LECs provide a "no fault" method whereby a carrier agrees that complaining customers may be switched back to prior carriers without any investigation. Although the cost of this method is considerably less than an investigation, the "no fault" method eliminates any market incentive for a carrier to maintain documentation of compliance with authorization and verification procedures.

[10] This proposed procedure is similar to credit card dispute resolution procedures that have functioned well for years.

The Commission's proposed rule on carrier liability for unauthorized changes (§ 64.1160(b)) incorporates the text of the 1996 Act, and obligates a "properly authorized carrier" to implement this directive and contact the offending carrier upon receipt of a complaint (FNPRM, para. 25 -30, 65). However, unless this measure is comprehensive in scope, slamming will continue to produce profits for unscrupulous carriers. The proposed rule must be strengthened in several respects to carry out Congressional intent to eliminate economic incentive for unlawful conduct.

First, the Commission should make it clear that slamming carriers are liable for all transaction costs including payment of amounts required to make subscribers whole such as re-rating of unauthorized toll calls. All costs directly resulting from the unauthorized switch are properly placed on carriers responsible for the unlawful change order.

Second, the proposed rule on reimbursement procedures is set in motion only upon a notification by the properly authorized carrier or the subscriber (§ 64.1170(a)). The measure should be expanded to encompass LECs, other carriers or government agencies who notify the unauthorized carrier.

Third, carriers should be required to retain LOAs and verification records for two years. LOAs and verification documentation should be available to consumers upon written or oral request and without having to furnish a signature sample. Also, carriers should be required to report slamming complaints to the Commission on a periodic basis. Without a record retention and reporting requirement, consumers and enforcement agencies may not have access to information about slamming practices, and remedies afforded by Section 258 will be restricted unnecessarily.

Fourth, the proposed reimbursement procedures (§ 64.1170) should be expanded to clearly prescribe that carriers establish a dispute resolution mechanism to resolve slamming complaints. While the proposal appears to require properly authorized carriers to presume the validity of subscriber complaints, the measure does not deal with resolution of disputed complaints. Moreover, the mechanism should address the problem of forged or falsified change orders submitted by unscrupulous promoters to dispute slamming complaints.

D. All Telemarketing Change Orders Should Be Subject To Verification Requirements.

We strongly support a requirement that all telemarketing change orders be subject to verification procedures (FNPRM, para. 19,20,44-51). We agree with the Commission's conclusion that "consumers who place calls to a carrier's sales or marketing center should receive the same protection as consumers who are contacted by the carrier." (FNPRM, para. 51).

This determination is supported by the following considerations: First, the distinction between in-bound and out-bound telemarketing contacts is easily obscured. Unscrupulous carriers could devise strategies to evade all verification procedures. Second, consumer complaints about unauthorized change orders are not limited to out-bound telemarketing transactions. In-bound telemarketing sales, prompted by printed advertisements or television commercials are also a fertile source of slamming complaints. Moreover, in some cases there is a factual dispute between the consumer and the carrier over who initiated the call which to the carrier change.

There is no policy reason to restrict verification procedures to only carrier-initiated telephone contacts. The potential for fraud and abusive telephone sales practices is well documented by cases against telecommunications providers that have "packed" unordered,

optional services into customer initiated telephone orders for other service.[11] This proven potential for customer abuse exists independent of who initiates the telephone call. We strongly urge that the Commission be guided by the scope established by the Federal Trade Commission Telemarketing Sales Rule in 16 C.F.R. § 310. This rule is applicable to telemarketers who initiate or receive calls. 16 C.F.R. § 310.2(t). We wholeheartedly endorse the application of verification requirements to both out-bound and in-bound telemarketing contacts.[12]

Consistent with a comprehensive approach to verification, the Commission should reject the proposal to exempt bundled services from these requirements (FNPRM, para. 20). Such an exemption would prove to be an easy way for any carrier to avoid all verification requirements. Preferred carrier change orders combined with written or oral orders for additional telecommunications service must be subject to verification requirements. It is critical that bundling presubscribed service with other telecommunications services not provide an opportunity to evade verification requirements. If there is any question regarding the potential for deception and confusion, the Commission need only refer to proceedings involving LOAs combined with unrelated services and incentives to gauge the potential for abuse.

E. Preferred Carrier Restrictions Create A Potential For Consumer Confusion And Abusive Practices. Such Practices May Inhibit Competition And Should Be Implemented Only At The Explicit Request Of A Subscriber.

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[11] See, e.g., Commonwealth ex rel. Zimmerman v. Bell Telephone Co. of Penn., 121 Pa. Commonwealth Ct. 642, 551 A.2d 602 (Commonwealth Ct. No. 668 C.D. 1988). Also see summaries of similar actions taken in California and Wisconsin included in the Appendix (App. 36-49).

[12] The Commission's experience with deceptive and fraudulent pay-per-call services sold through in-bound telemarketing transactions should motivate the Commission to address this matter before abuse becomes rampant.

The Commission's determination to include consideration of preferred carrier (PC) freeze solicitation practices in this rulemaking is appropriate at this time (FNPRM, para. 21-24). PC-freeze arrangements provide an opportunity for subscribers to protect themselves from slamming.[13] By restricting a subscriber's LEC from acting upon change orders submitted by other carriers, a subscriber can ensure that only personally authorized change orders are put in place.

While PC-freeze arrangements offer subscribers protection against slamming, these measures may also have the unintended effect of inhibiting competition by imposing additional procedures that new competitors must follow to win customers from established carriers. Moreover, potential confusion related to which of several carriers (local, intraLATA or interLATA) are subject to the freeze may be exploited easily by incumbent LECs that are tempted to use misleading PC-freeze solicitations to lock-in subscribers in the face of new local exchange competitors.[14]

There are other concerns regarding the promotion and implementation of PC-freeze arrangements beyond perceived anti-competitive effects. For example, unscrupulous carriers may compound slamming by submitting an unauthorized PC-freeze with an unauthorized change order.

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[13] A LEC PC-freeze will not provide absolute protection against slamming. This procedure locks in place the particular carrier to which a subscriber's 1+ long distance calls are routed. However, a PC-freeze will not preclude an unauthorized switch by a reseller of a subscriber's 1+ carrier. This change is implemented by the IXC and is not apparent to an LEC and not prevented by a subscriber's LEC PC-freeze.

[14] The Illinois Commerce Commission has held certain PC-freeze solicitations to be misleading. MCI Telecommunications Corporation v. Illinois Bell Telephone Company, Illinois Commerce Commission No. 96-0075 (April 3, 1996), aff'd on appeal (Ill. Ap. Ct. Sept. 5, 1997).

Under this scenario, a subscriber's efforts to return to a prior authorized carrier will be frustrated by the PC-freeze.[15]

In view of the serious potential for consumer confusion and overreaching tactics, PC-freezes should be implemented only upon the clear and unequivocal request of a subscriber made directly to the PC administrator.[16] The Commission should mandate that clear and conspicuous disclosure is made regarding the carriers that are subject to the freeze, the steps to be taken to set aside the freeze and other material terms. Furthermore, we urge the Commission to prohibit carriers from confusing orders for a PC-freeze with a carrier change order. Under such a regimen, the potential for confusion and deception as well as anti-competitive practices would be limited.

F. The Commission's Proposal That All Telecommunications Carriers Should Be Subject To Verification Rules Is Sound; However, Commission Rules Should Not Preempt Consistent, But More Protective State Requirements.

The Commission's proposal to extend verification rules for carrier change orders to all carriers is supported by the explicit text of Section 258 (FNPRM, para. 11 -16). The proposed definitions of "submitting" and "executing" carriers and substitution of the term "customer" for "subscriber" are appropriate.

The Commission must carefully evaluate the adequacy of verification rules with regard to the unique status of incumbent local exchange providers. The current rules, together with additional measures as herein described provide a framework to deter slamming related to local

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[15] A similar abuse occurs when a carrier purports to contractually restrict cancellation methods available to subscribers. One complainant reported being switched back to an unwanted carrier six times (App. 6-12).

[16] This position does not preclude carriers from making PC-freeze information available to subscribers.

exchange services. The change in status of incumbent local exchange companies from a neutral facility provider to competitor in local *and* long distance service will undoubtedly present additional considerations. It may be necessary for the Commission to revisit this proceeding to address these issues as local competition develops.

In its enactment of Section 258, Congress has made clear its intent not to preempt state law enforcement, regulatory measures and other remedies against slamming. The Commission staff has supported state enforcement efforts, and courts have recognized that verification procedures do not preempt state deceptive practice statutes.[17] Nevertheless, an explicit expression of the Commission's intent not to preempt state measures that provide for similar or additional protections or state enforcement actions, as long as they do not conflict with Commission requirements, would be helpful in dealing with preemption issues in future enforcement actions.

G. The Commission's Proposal To Establish A "Bright Line" For Subscriber Notification Of A Reseller's Change Of Underlying Carrier Is Warranted.

The Commission's proposal to establish a "bright line" test to be used to determine whether a reseller must inform subscribers of a change in underlying carrier is sound (FNPRM, para 36-40). Under the proposal, notification is required when a reseller represents either (1) that it will use particular underlying carrier services, or (2) that an underlying carrier would not be changed. This approach conforms to long-standing and fundamental tenets of established

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[17] See, e.g., In re Long Distance Telecommunications Litigation, 831 F.2d 627, 633 (6th Cir. 1987).

consumer protection law that it is an unfair practice to substitute a different product or service from the one purchased.[18]

III. THE COMMISSION SHOULD PROHIBIT DECEPTIVE AND ABUSIVE SLAMMING PRACTICES.

The Commission has tentatively concluded that enhanced verification procedures bolstered by economic disincentives provided by Section 258, will significantly reduce slamming (FNPRM, para. 9). While these measures undoubtedly will help deter slamming, they provide an after-the-fact approach to the underlying problem: deception, fraud, abusive practices and related consumer misunderstanding and confusion in the sales transaction.

Slamming complaints generally describe two categories of carrier misconduct: (1) submission of change orders based on forged LOAs or fictitious oral transactions; or (2) submission of change orders when deception and abusive tactics were used to obtain purported authorization.[19]

The Commission's first remedial measure, verification of prior authorizations, does not deal directly with the underlying abuse. Verification procedures are least likely to deter or prevent fraud or forgery. A carrier or a marketing agent intentionally submitting a fraudulent change order will also likely falsify verifications, although the verification process makes fraud more difficult. Furthermore, post-sale verification procedures may not limit abusive sales tactics that use lies, half-truths and misimpressions to obtain authorization. Unscrupulous telemarketers may use verification procedures that compound initial deception instead of confirming authorization for change orders. Post-sale verification is an incomplete remedy for slamming.

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[18] See, e.g., National Trade Publications Services, Inc. v. FTC, 300 F.2d 790 (8th Cir. 1962).

[19] Some slamming complaints may also result from buyer's remorse or inadvertent clerical errors to switching.

Similarly, the second deterrent involving economic disincentives is dependent upon implementation by the prior authorized carrier upon receipt of a complaint evidencing a violation. It remains to be seen to what extent this measure will be implemented by carriers. Perhaps a "no fault" approach similar to LEC handling of slamming complaints will evolve and again remove any real market driven incentive for carriers to ensure that valid authorizations are obtained.

The Commission should directly prohibit carriers from using deceptive or abusive practices evidenced in slamming complaints. Both oral and other solicitation methods are subject to common deceptive practices: misrepresentation of affiliation with established carriers; misrepresentation of discounts or savings; and failing to disclose that a preferred carrier will be changed. The Commission should prohibit directly such misconduct.

The Commission should also set standards, the violation of which could be readily detected before slamming occurs.[20] The Commission could impose requirements similar to those that the Federal Trade Commission has put in place for telemarketing sales. This approach would deal with abuses and root causes of slamming and ameliorate consumer confusion. For example, under the FTC Telemarketing Sales Rule, 16 C.F.R. § 310.4(d), telemarketing sellers clearly and unambiguously must disclose at the beginning of a telemarketing solicitation, after an initial greeting (1) the seller's name, (2) the company name, and (3) the purpose of the call.

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[20] Although carriers are subject to state deceptive practice laws, carriers assert to be as exempt from section 5 of the Federal Trade Commission Act which prohibits unfair and deceptive practices. Thus, some carriers have asserted that trade practices involving telecommunications services are not subject to rules enacted by the Federal Trade Commission such as the Pay-Per-Call Rules and Telemarketing Sales Rule. Commonwealth of Massachusetts v. Info. Access, Inc., U.S.D.C. Civil Action No. 94-1209 (JLT) (D. Mass. 1994). Consequently, the adoption of specific prohibitions against deceptive practices would provide additional protective measures to stop preliminary actions that contribute to slamming.

IV. SUBSCRIBERS SHOULD BE NOTIFIED THAT PREFERRED CARRIERS HAVE BEEN SWITCHED.

Slamming persists because an unauthorized change is difficult to detect after the fact. Under current procedures, carriers that obtain written LOAs or some oral authorizations are not required subsequently to notify a new customer of such authorizations or anticipated change orders. Frequently unauthorized or unintended conversions are not detected by subscribers for a significant time period following the switch. Detection is hampered by slammers, such as resellers, that use business names that do not communicate an independent status, distinct from well-recognized underlying carriers.

By including unauthorized charges with local telephone bills, overreaching carriers take advantage of a subscriber's routine payment of monthly utility bills. When charges are submitted through billing aggregators, a change in carrier may be even more difficult to detect.

If subscribers were to receive clear and conspicuous notice in their telephone bill that a presubscribed carrier had been changed, unauthorized changes would be more readily detected. A notice should be required to appear on a subscriber's billing statement relating to affected toll charges that clearly and conspicuously identifies the name of the new carrier and the date when service is to be effective.

V. VERIFICATION REQUIREMENTS MUST BE STRENGTHENED TO FURTHER CONSUMER UNDERSTANDING AND DETER DECEPTION AND FRAUD.

The verification procedures specified in § 64 1100 provide a general framework to confirm orally an authorization obtained in a telemarketing transaction. While the Commission recently focused on abuses associated with written LOAs, third party oral verification methods have also been the subject of abuse. There are additional measures that should be implemented to

increase the likelihood that carrier initiated change orders have been knowingly requested by subscribers.

First, independent third party verification should include clear and conspicuous disclosure of material information as enumerated in 47 C.F R. § 64.1100(c). Some carriers have taken advantage of the absence of specific requirements and have devised verification methods that further prior misrepresentations and compound consumer confusion and misunderstanding.[21] Instead of providing explicit notice that a subscriber has changed telephone companies, limited information is sought purportedly to confirm the order. To remedy these abuses, the Commission should define format and content, and require that material terms such as are mandated for LOAs be clearly and conspicuously disclosed in the third party oral verification process.

Second, independent verification must be separate from the sales transaction. Although the regulation requires an "independent third party," some carriers conduct three-way calls which involve the subscriber, the telemarketing sales representative and the verification representative. This three-way calling method of verification is vulnerable to deceptive practices used by disreputable telemarketers because subscribers remain under the influence of the telemarketing sales representative while the verification takes place.[22] The Commission should delineate minimum requirements to ensure that verification involves only the consumer and the third-party verifier.

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[21] Attached are redacted transcripts of a purported verification performed by a reseller to document subscriber authorization (App. 31). The script compounded deceptions fostered in the preliminary sales presentation and does not clearly and conspicuously confirm that a subscriber's long distance service would be changed.

[22] Transcripts of verification calls are included in the Appendix (App. 31).

CONCLUSION

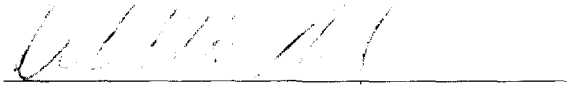
State Attorneys General support the Federal Communication Commission's efforts to enact meaningful rules to implement Congressional intent, consistent with these recommendations, to protect consumers' right to choose telecommunications service and prevent slamming. If adopted, the Commission's proposals, together with these additional safeguards, will establish a sound basis for carriers to compete, while deterring deception and fraud and minimizing potential consumer confusion.

By limiting the liability of slammed consumers, the Commission will establish firm market-based economic incentives to deter slamming, while not placing an undue burden upon companies that compete fairly without recourse to deception and fraud.

Consumer benefits promised from deregulation of telecommunications services only will be realized if competition is fair and deceptive practices are eliminated. Once in place, these proposals will provide a foundation for responsible telecommunications carriers to fairly compete and efficiently provide services to consumers.

Dated this 12th day of September, 1997.

Respectfully submitted,



RICHARD BLUMENTHAL
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Chairperson, Telecommunications Subcommittee
Consumer Protection Committee
National Association of Attorneys General

The following Attorneys General join in these comments:

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Before the
FEDERAL COMMUNICATIONS COMMISSION

In the Matter of	)	
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	)	
Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers	)	CC Docket No. 94-129

SEPARATE APPENDIX TO THE COMMENTS OF THE NATIONAL ASSOCIATION OF ATTORNEYS GENERAL, CONSUMER PROTECTION COMMITTEE, TELECOMMUNICATIONS SUBCOMMITTEE

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